UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JOHN ZDZIEBLOSKI and SHEILA ZDZIEBLOSKI,

Plaintiffs,

-against-

THE TOWN OF EAST GREENBUSH,

Defendant.

ANSWER TO
AMENDED COMPLAINT

Case No. 1:15-CV-298
(LEK/RFT)

The Defendant, The Town of East Greenbush (hereinafter referred to as "Town"), by and through its attorneys, Young / Sommer LLC, as and for its Answer and Affirmative Defenses to Plaintiffs' Complaint dated March 25, 2015 (hereinafter the "Complaint"), alleges and states as follows:

ANSWER TO ALLEGATIONS

1. The allegations contained in Paragraph 1 of the Complaint consist solely of legal conclusions rather than any allegations of fact, to which no response is required; however, to the extent that said allegations do not constitute legal conclusions or are construed against the Town, the Town denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1 of the Complaint.

2. The allegations contained in Paragraph 2 of the Complaint stating "[t]his is a civil action seeking injunctive relief, penalties, attorney's fees and expenses under the Federal Water Pollution Control Act (Clean Water Act or CWA), 33 U.S.C. § 1251 et seq. against the Town, for past and ongoing violations of the Clean Water Act, specifically 33 U.S.C. §§ 1311(a) and 1342(b)," consist of legal conclusions rather than any allegations of fact, to which no response is

legally required; however, to the extent that said allegations do not constitute legal conclusions or are construed against the Town, the Town denies the allegations contained in Paragraph 2 of the Complaint; and, further, the Town denies the remaining allegations in Paragraph 2 of the Complaint regarding the alleged unauthorized discharge of pollutants by the Town into the waters of the United States.

3. In response to Paragraph 3 of the Complaint, the Town states that the allegations contained in Paragraph 3 consist solely of legal conclusions or statements of law rather than any allegations of fact, to which no response is legally required.

4. In response to Paragraph 4 of the Complaint, the Town states that the allegations contained in Paragraph 4 consist solely of legal conclusions or statements of law rather than any allegations of fact, to which no response is legally required; however, to the extent that said allegations do not constitute legal conclusions or are construed against the Town, the Town denies the allegations contained in Paragraph 4 of the Complaint.

5. In response to Paragraph 5 of the Complaint, the Town states that the allegations contained in Paragraph 5 consist solely of legal conclusions or statements of law rather than any allegations of fact, to which no response is legally required.

6. In response to Paragraph 6 of the Complaint, the Town admits the allegations contained in Paragraph 6 of the Complaint to the extent that the Town is a New York State municipality organized and existing under the laws of the State of New York with a principal place of business at Town of East Greenbush Town Hall, 225 Columbia Turnpike, Rensselaer, New York 12144; and the remaining allegations contained in Paragraph 6 of the Complaint consist of legal conclusions rather than any allegations of fact, to which no response is legally required.

7. In response to Paragraph 7 of the Complaint, the Town denies the allegations contained in Paragraph 7 of the Complaint.

8. In response to Paragraph 8 of the Complaint, the Town denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 8 of the Complaint.

9. In response to Paragraph 9 of the Complaint, the Town denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 9 of the Complaint.

10. In response to Paragraph 10 of the Complaint, the Town denies the allegations contained in Paragraph 10 of the Complaint.

11. In response to Paragraph 11 of the Complaint, the Town states that the allegations contained in Paragraph 11 consist solely of legal conclusions or statements of law rather than any allegations of fact, to which no response is legally required. The Town respectfully refers the Court and parties to the statutes cited therein and denies any allegations inconsistent with those statutes.

12. In response to Paragraph 12 of the Complaint, the Town denies the allegations contained in Paragraph 12 of the Complaint.

13. In response to Paragraph 13 of the Complaint, the Town denies the allegations contained in Paragraph 13 of the Complaint related to the discharge of pollutants into alleged "Sheila Pond"; the Town denies knowledge or information sufficient to form a belief as to the alleged content of the alleged discharge; and the remaining allegations contained in Paragraph 13 of the Complaint consist of legal conclusions rather than any allegations of fact, to which no response is legally required.

14. In response to Paragraph 14 of the Complaint, the Town denies the allegations contained in Paragraph 14 of the Complaint.

15. In response to Paragraph 15 of the Complaint, the Town denies the allegations contained in Paragraph 15 of the Complaint regarding the Town engaging in any unpermitted activity or discharging anything as to the alleged "Sheila Pond," and denies knowledge or information sufficient to form a belief as to the allegation regarding the alleged assimilative capacity of the alleged pond.

16. In response to Paragraph 16 of the Complaint, the Town denies the allegations contained in Paragraph 16 of the Complaint.

17. In response to Paragraph 17 of the Complaint, the Town denies the allegations contained in Paragraph 17 of the Complaint.

18. In response to Paragraph 18 of the Complaint, the Town denies the allegations contained in Paragraph 18 of the Complaint.

19. In response to Paragraph 19 of the Complaint, the Town admits the allegations contained in Paragraph 19 of the Complaint to the extent that on or about December 2, 2014, Defendant Town was made aware of Plaintiffs' intention to commence this suit by letter on behalf of the Plaintiffs; admits that attached as Exhibit A to the Complaint is a copy of Plaintiffs' Notice letter received by the Town and respectfully refers the Court to the letter for a full and complete account of its contents and denies any allegations inconsistent therewith; the Town denies knowledge or information sufficient to form a belief as to allegations involving federal and State authorities or how they allegedly received notice from Plaintiffs; and further states that the remaining allegations contained in Paragraph 19 of the Complaint regarding "Plaintiffs

properly served and duly notified Defendant..." consist of legal conclusions rather than any allegations of fact, to which no response is required.

20. In response to Paragraph 20 of the Complaint, the Town admits the allegations contained in Paragraph 20 of the Complaint.

21. In response to Paragraph 21 of the Complaint, the Town states that the allegations contained in Paragraph 21 consist solely of legal conclusions or statements of law rather than any allegations of fact, to which no response is legally required; however, to the extent that said allegations do not constitute legal conclusions or are construed against the Town, the Town denies the allegations contained in Paragraph 21 of the Complaint.

22. In response to Paragraph 22 of the Complaint, the Town denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 22 of the Complaint.

23. In response to Paragraph 23 of the Complaint, the Town states the allegations contained in Paragraph 23 of the Complaint consist solely of legal conclusions or statements of law rather than any allegations of fact, to which no response is legally required. However, to the extent that said allegations do not constitute legal conclusions or are construed against the Town, the Town denies the allegations contained in Paragraph 23 of the Complaint.

24. In response to Paragraph 24 of the Complaint, the Town states the allegations contained in Paragraph 24 of the Complaint stating "Plaintiffs are "citizens" under the Clean Water Act" consist of legal conclusions or statements of law rather than any allegations of fact, to which no response is legally required; however, to the extent that said allegations do not constitute legal conclusions or are construed against the Town, the Town denies the allegations contained in Paragraph 24 of the Complaint. Further, the Town denies knowledge or information

sufficient to form a belief as to the Plaintiffs' alleged "interests" and the Town specifically denies the remaining allegations in Paragraph 24 of the Complaint stating "[a]ll of these interests are adversely affected by Defendants' illegal discharges and ongoing discharges of pollutants into Sheila Pond."

25. In response to Paragraph 25 of the Complaint, the Town denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 25 of the Complaint; and further, the Town specifically denies the allegations in Paragraph 25 of the Complaint regarding "Defendants' violations of the Clean Water Act."

AFFIRMATIVE DEFENSES

AS AND FOR THE TOWN'S FIRST AFFIRMATIVE DEFENSE

26. The Town repeats and realleges its foregoing responses from Paragraphs 1-25 in full herein, and otherwise denies any allegations from the Amended Complaint not specifically admitted or denied.

27. The purported water body identified by the Plaintiffs as "Shelia Pond" is, upon information and belief, a manmade stormwater retention basin and/or was a naturally created stormwater retention basin for the surrounding landscape and environment.

28. Upon information and belief, there is no formal name or recognition of the asserted water body as having been designated "Sheila Pond" under federal, State or local law.

29. Upon information and belief, the source of water for the asserted water body is stormwater run-off from the surrounding landscape and rain from weather events.

30. Upon information and belief, the asserted water body is not a water of any quality recognized by New York State law or the federal Clean Water Act ("CWA"), or their respective implementing regulations.

31. Upon information and belief, there are no streams, tributaries or water courses otherwise flowing to or from the asserted water body.

32. Upon information and belief, the asserted water body is an isolated stormwater basin that is not adjacent to any open body of water as contemplated by the CWA and otherwise is not adjacent to any body of water subject to the CWA.

33. The Town does not own, operate nor control any stormwater system that illegally or improperly discharges pollutants into the alleged water body, as is otherwise asserted by the Plaintiffs.

34. Upon information and belief, a private land owner owns lands attributable to the conditions and/or acts complained of by the Plaintiffs.

35. As such, there is no "discharge of a pollutant" that is attributable to the Town from any "point source" attributable to the Town under the CWA (33 U.S.C. § 1311, §1362).

AS AND FOR THE TOWN'S SECOND AFFIRMATIVE DEFENSE

36. The Town repeats and realleges its foregoing responses from Paragraphs 1-35 in full herein, and otherwise denies any allegations from the Amended Complaint not specifically admitted or denied.

37. Upon information and belief the asserted pond does not constitute "waters of the United States" or "navigable waters" and is an isolated pond comprised of rain water and natural storm water runoff from the surrounding landscape and is therefore not subject to the CWA (33 U.S.C. § 1362).

AS AND FOR THE TOWN'S THIRD AFFIRMATIVE DEFENSE

38. The Town repeats and realleges its foregoing responses from Paragraphs 1-37 in full herein, and otherwise denies any allegations from the Amended Complaint not specifically admitted or denied.

39. To the extent the Court determines that the alleged water body is a "navigable water" constituting part of the "waters of the United States" and that the Town is responsible for a "discharge of a pollutant" from a "point source", the Town has appropriate permits from the State of New York under its municipal separate storm sewer systems authorizations.

AS AND FOR THE TOWN'S FOURTH AFFIRMATIVE DEFENSE

40. The Town repeats and realleges its foregoing responses from Paragraphs 1-39 in full herein, and otherwise denies any allegations from the Amended Complaint not specifically admitted or denied.

41. To the extent the Court determines that the alleged water body is a "navigable water" constituting part of the "waters of the United States" and that the Town is responsible for a "discharge of a pollutant" from a "point source", the purported storm water discharge is exempt from regulation under the regulations of the New York State Department of Environmental Conservation Part 750-1.5

AS AND FOR THE TOWN'S FIFTH AFFIRMATIVE DEFENSE

42. The Town repeats and realleges its foregoing responses from Paragraphs 1-41 in full herein, and otherwise denies any allegations from the Amended Complaint not specifically admitted or denied.

43. The Plaintiffs' lack standing to bring this action and have not suffered any harm by the alleged actions asserted in its Amended Complaint. The Plaintiffs, upon information and

belief, also constitute dischargers of pollutants under 33 U.S.C. § 1311 without any permit under 33 U.S.C. § 1342, contributing to any alleged pollution of the asserted water body and therefore their own alleged harm.

AS AND FOR THE TOWN'S SIXTH AFFIRMATIVE DEFENSE

44. The Town repeats and realleges its foregoing responses from Paragraphs 1-43 in full herein, and otherwise denies any allegations from the Amended Complaint not specifically admitted or denied.

45. The Plaintiffs have failed to demonstrate any water quality standard or condition for the asserted water body, and any alleged discharge of pollutants attributable to the Town has not had any adverse impact on the water quality of the asserted water body.

AS AND FOR THE TOWN'S SEVENTH AFFIRMATIVE DEFENSE

46. The Town repeats and realleges its foregoing responses from Paragraphs 1-45 in full herein, and otherwise denies any allegations from the Amended Complaint not specifically admitted or denied.

47. The Town has not committed any violation and is otherwise not liable for any alleged violation under 33 U.S.C. § 1311 and 33 U.S.C. § 1342, or any related provisions of the CWA.

AS AND FOR THE TOWN'S EIGHTH AFFIRMATIVE DEFENSE

48. The Town repeats and realleges its foregoing responses from Paragraphs 1 through 47 in full herein, and otherwise denies any allegations from the Amended Complaint not specifically admitted or denied.

49. The Plaintiffs' claims are barred by the doctrine of laches.

WHEREFORE, the Town respectfully requests that this Court award it judgment dismissing the Amended Complaint and provide the Town such other and further relief deemed just and proper, including costs, fees and equitable relief.

Respectfully submitted,

Dated: May 26, 2015
Albany, New York

YOUNG / SOMMER LLC

By: ____________________________

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